

**OPERATING AGREEMENT BETWEEN THE FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION AND THE FLORIDA DIVISION OF HISTORICAL
RESOURCES - STATE HISTORIC PRESERVATION OFFICER REGARDING THE
STATE 404 PROGRAM**

I. INTRODUCTION

The Florida Department of Environmental Protection (hereinafter "Department") has the authority to assume the Clean Water Act Section 404 dredge and fill permitting program. In its administration of the program, the State must consider the effects, if any, that a State 404 Program permit could have on historic properties. Pursuant to section 267.061(2)(a), Florida Statutes (F.S.), these historic properties are those included in, or eligible for inclusion in, the National Register of Historic Places. To affect a proper and comprehensive review of permit actions on these sites, the Department has entered into this operating agreement (hereinafter "Agreement") with the Florida Division of Historical Resources, State Historic Preservation Officer (SHPO). SHPO has the expertise necessary to ensure the thorough preservation of these historic properties, as well as proficiency in determining those areas within the state that may be eligible for inclusion in the National Register. This Agreement will provide for the protection of these rich historic resources when the Department administers the State 404 permitting program, which constitutes a State undertaking. The process outlined in this Agreement is referred to as the historic properties review and is designed to work within the already established timeframes for the processing of State 404 Program permit applications set forth in Chapter 62-331, F.A.C.

- A. Consulting Parties.** The following parties may have an interest and/or consultative roles in the historic properties review of applications State undertakings:

1. Action Agency:

- a. Florida Department of Environmental Protection.** The Department is the state agency responsible for administering the State 404 Program in state-assumed waters, which includes the authority to issue general permits and to grant or deny applications for State 404 Program permits. (§373.4146(5)(a), F.S.).

2. Consulting Parties:

- a. Florida Department of Environmental Protection.** The state agency responsible for administering the State 404 Program in state-assumed waters, which includes the authority to issue general permits and to grant or deny applications for State 404 Program permits. (§373.4146(5)(a), F.S.).

- b.a. State Historic Preservation Officer.** SHPO reflects the interests of Florida and its citizens in the preservation of the state's cultural heritage. SHPO will advise and assist the Department with carrying out its historic preservation responsibilities (§267.038(5)(e), F.S.). If an Indian tribe has assumed the functions of SHPO in the historic properties review of applications for activities

Commented [RS1]: Consulting Parties should be separated from parties to whom notice is given generally. Public and applicant are not on same footing in this process as FDEP, SHPO, THPOs, and local governments. Becomes problematic at II.A.1- you cannot send an email to the public. And does the email also go to the applicant?

on tribal lands. SHPO shall participate as a consulting party if the activity takes place on tribal lands but affects historic properties off tribal lands, if requested, or if the Indian tribe agrees to include the SHPO. ((State 404 Program Handbook ("Handbook") 5.2.2). SHPO shall be a consulting party.

c.b. Indian tribes. Indian tribes include any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a federal Indian reservation. Indian tribes frequently have an interest in State undertakings which may affect cultural resources or historic properties of religious and cultural significance on ancestral, aboriginal, or ceded lands.

Commented [RS2]: Consistent with 404 Handbook Definition 50

~~e. Consultation on tribal lands.~~

~~ii. Tribal historic preservation officer. For a tribe that has assumed the responsibilities of the SHPO for historic properties review on tribal lands under section 101(d)(2) of the NHPA, the tribal historic preservation officer (THPO) is the official representative for the purposes of the historic properties review. The Department shall consult with the THPO in lieu of the SHPO regarding applications for activities occurring on or affecting historic properties on tribal lands.~~

~~iii. Tribes that have not assumed SHPO functions. When an Indian tribe has not assumed the responsibilities of the SHPO for historic properties review on tribal lands under section 101(d)(2) of the NHPA, the Department official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding applications for activities occurring on or affecting historic properties on its tribal lands. Such Indian tribes have the same rights of consultation and concurrence that the THPOs are given throughout this Agreement, except that such consultations shall be in addition to and on the same basis as consultation with the SHPO.~~

~~i. Consultation on historic properties of significance to Indian tribes. The Department shall consult with any Indian tribe or organization that attaches religious and cultural significance to historic properties that may be affected by an application. This consultation applies regardless of the location of the historic property. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the Department to reevaluate properties previously determined eligible or ineligible. The Department shall acknowledge that Indian tribes possess special expertise in assessing the eligibility of cultural resources or historic properties that may possess religious and cultural significance to the Indian tribe. Such Indian tribe shall may choose to participate as a consulting party in the Department's historic properties review and may participate in the determination of the Area of Potential Effects.~~

Commented [RS3]: 36 CFR 800.4(c)(1)

ii. ~~Where an Indian tribe has assumed the responsibilities of Tribal Historic Preservation Office (THPO) for section 106 under section 101(d)(2) of the National Historic Preservation Act (NHPA), the Department shall coordinate consultation with the THPO for purposes of historic properties review. Where an Indian tribe has not assumed the responsibilities of the THPO for section 106 under section 101(d)(2) of the NHPA, the Indian tribe may notify the Department in writing that it is waiving its rights to provide comments on State 404 program permit applications.~~

~~When Indian tribes or organizations attach religious and cultural significance to historic properties off tribal lands the Department will make a reasonable and good faith effort to consult with such Indian tribes in the historic properties review. The Department is aware that historic properties of religious and cultural significance are frequently located on ancestral, aboriginal, or ceded lands of Indian tribes or organizations~~

~~An Indian tribe that has not assumed the responsibilities of the THPO for section 106 on tribal lands under section 101(d)(2) of the NHPA may notify the Department in writing that it is waiving its rights to provide comments on State 404 program permit applications.~~

~~g.c.~~ **Local Government.** A representative of a local government with jurisdiction over the area in which the effects of an application may occur may choose to participate as a consulting party.

Commented [GS4]: What is the difference if they are a Certified Local Government? Can we say Local Government or Certified Local Government here?

Commented [RS5]: Inconsistent with I.B.5- if consulting party then triggers more review than public notice

3. Other Interested Parties:

b.a. Applicants. Applicants may participate in the historic properties review.

b. Public. The views of the public are essential to informed decision making in the historic properties review. The Department ~~shall~~ will seek and consider the views of the public in a manner that reflects the nature and complexity of the application and its effects on historic properties, the likely interest of the public in the effects on historic properties, and confidentiality concerns of private individuals and businesses.

c. Nonfederally Recognized Indian Tribes. Also called nonfederally recognized groups, State-recognized Indian tribes, and unrecognized tribal groups. These are groups who are not eligible for the special programs and services provided by the United States but may have an interest in State undertakings which may affect cultural resources or historic properties of religious and cultural significance on ancestral, aboriginal, or ceded lands.

Commented [RS6]: There appears to be no federal statutory definition for this term. The proposed definition is from Title 190 Part 315- Tribal Ancestral Lands Consultation under the National Historic Preservation Act- Guidance for Natural Resource Conservation Service Employees (Subpart B- Exhibits).

B. Duties and Responsibilities:

1. **The Department.** The Department ~~shall~~will be responsible for leading the historic properties review of State undertakings associated with the State 404 Program. The Department ~~will~~shall, in accordance with the provisions of Sections II and III below, perform the following duties in support of this Agreement:

a. To SHPO:

- i. Notify SHPO of an application for a State 404 Program permit in accordance with the procedures provided in Section II.A. or an intended compliance action in accordance with the procedures provided in Section II.B.
- ii. Provide SHPO sufficient information to conduct an assessment of the potential effects the application or compliance action may have on historic properties.
- iii. Request, on behalf of SHPO, any additional information required to support their findings, recommendations, or determinations. The Department will notify the SHPO when the response to the request is received.
- iv. Will address any adverse effects on historic properties in accordance with Section III.B.

Commented [SG7]: Tribes that wish to consult in accordance with II.A. (initial review) can be added here.

b. To THPO or Indian tribe when the interested tribe does not have a THPO:

- i. Notify THPO/Indian tribe of an application for a State 404 Program permit in accordance with the procedures provided in Section II.A. or an intended compliance action in accordance with the procedures provided in Section II.B. of an application for a State 404 Program permit or compliance action in accordance with Section II.B.
- ii. Provide THPO/Indian tribe sufficient information to conduct an assessment of the potential effects the application or compliance action may have on cultural resources or historic properties of religious and cultural significance.
- iii. Request, on behalf of THPO/Indian tribe, any additional information required to support their findings, recommendations, or determinations. The Department will notify the THPO/Indian tribe when the response to the request is received.
- iv. Will address any adverse effects on historic properties of cultural resources or religious and cultural significance in accordance with Section III.B.

Commented [SG8]: Tribes that wish to consult in accordance with II.B – during public notice - can be added here. This section can also be used if a tribe wants to participate in accordance with II.B for applications in specific geographic locations, but II.C. for others.

c. To the public and local governments:

- i. Notify the public and local governments of an application for a State 404 Program permit or compliance action in accordance with Section II.B.
 - ii. Receive comments from the public or local governments during the comment period.
 - iii. Request, on behalf of the public or local government, any additional information required to clarify the concerns expressed by the public or local government regarding potential effects to historic properties made during the comment period.
- d. To the applicant:
 - i. May request additional information, on behalf of a consulting party, to support the findings, recommendations, or determinations.
 - ii. Coordinate the review of historic properties potentially affected by the individual and general permit application.
 - iii. Provide a final decision to grant or deny an application.
 - iv. If an agency, such as FDOT, is the applicant and has previously coordinated with SHPO and THPO Indian tribe on the project, and there have been no changes to the project following coordination, the agency may submit proof of concurrence or a determination by SHPO and THPO Indian tribe for the proposed project with the application for a State 404 permit.

2. SHPO. SHPO will, in accordance with the provisions of Sections II and III, ~~provide or perform~~ the following duties in support of this Agreement:

- a. To the Department:
 - i. Review general permit and expedited applications against the Florida Master Site File to determine the presence or absence of historic properties or request that the project be evaluated as an individual permit because of potential historical resources concerns.
 - ii. Review individual permit applications for potential effects to historic properties listed or eligible for listing on the National Register.
 - iii. Notify the Department of any request for additional information to the applicant to complete the historic properties review of the application.
 - iv. Provide a determination of the effect an application may have on historic properties.

- v. Provide recommendations for alternatives or modifications to the application that could avoid, minimize, or mitigate adverse effects on historic properties.

b. To applicant:

- i. Conduct a historic properties search ~~Make available the State against the Florida Master File when an applicant provides information required for review of no-notice general permits to determine assist applicants for general permits (no-notice) determine if their application has the potential to affect any known historic properties.~~
- ii. Inform the applicant if SHPO or THPO/Indian tribes determine area includes a historic property listed or eligible for listing on the National Register.
- iii. Assist with any pre-coordination, initiated by an applicant, to facilitate the historic properties review for an application.

Commented [RS9]: Made consistent with Rule 62-331.200(3)(j) and Handbook 5.2.2

c. To THPO/Indian tribes:

- i. On the same day received, provide information by an applicant for review of no-notice general permits.
- ii. On the same day received, provide information related to an unanticipated discovery, effects to historic resources, or the identification of unmarked human remains on issued no-notice general permits, general permits, and individual permits.

3. THPO/Indian Tribes. THPO/Indian tribe ~~will may~~, in accordance with the provisions of Sections II and III, be afforded an opportunity to provide the following in support of this Agreement:

a. To the Department

- i. Review general permit and expedited applications to determine the presence or absence of cultural resources or historic properties of religious and cultural significance or request that the project be evaluated as an individual permit because of potential historical resources concerns.
- ii. Review individual permit applications for potential effects to cultural resources or historic properties of religious and cultural significance listed or eligible for listing on the National Register.
- iii. Notify the Department of any request for additional information to the applicant to complete the historic properties of religious and cultural significance or cultural resource review of the application.

iv. Review and comment on the effect an application may have on cultural resources or historic properties of religious and cultural significance.

v. Provide recommendations for alternatives or modifications to the application, or for special conditions to add to the permit that could avoid, minimize, or mitigate adverse effects on cultural resources or historic properties of religious and cultural significance.

vi. Provide determination if no-notice general permit area includes a cultural resource or historic property of religious and cultural significance listed or eligible for listing on the National Register.

vii.

b. To applicant/SHPO:

i. Assist applicants for general permits (no notice) determine if their application has potential to affect any known historic properties.

i. Assist with any pre-coordination initiated by an applicant to facilitate the historic properties review for an application. Conduct a historic properties search of no-notice general permits to determine if the application has the potential to affect any known cultural resources or historic properties of religious and cultural significance.

ii. Provide determination if no-notice general permit area includes a cultural resource or historic property of religious and cultural significance listed or eligible for listing on the National Register.

4. The Applicant. In accordance with the following regulatory requirements, the Applicant will provide the following duties in support of this Agreement.

- a. Certify that all information contained in the application is true and accurate. (Forms 62-330.060, section A, part 4, and 62-330.402(1), Part 2)
- b. Respond to the Department's request for additional information within the timeframes set forth in Applicant's Handbook, Volume I, sections 5.3.3. and 5.5.3.
- c. Provide a Cultural Resource Assessment Survey (CRAS) when requested by the Department pursuant to the State 404 Program Applicant's Handbook, Section 5.2.2.
- d. Coordinate the historic properties review for general permit (no notice) applications. See Section 62-331.200(3)(i), F.A.C.

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- e. Pre-coordinate with consulting parties, when desired, to expedite the historic properties review of an application and provide any documentation resulting from such pre-coordination to the Department in support of the application.

5. The Public/Local Government. The public and local governments may provide the following duties in support of this Agreement

Commented [RS10]: Earlier in the parties section you have local government as a consulting party. That seems inconsistent with this section.

- a. Review the Public Notice for information on the application.
- b. Address any questions or concerns to the Department during the comment period.
- c. Attend any public hearings, ~~that which~~ may be sponsored by the Department to solicit comments on an application.

II. PROCEDURES

A. Consultation during the Department's initial review of a State 404 Program permit.

- 1. Within five days of receipt of an application for a State 404 Program Permit, the Department shall email a notification to ~~SHPO and THPO/Indian tribe~~
~~consulting parties~~. The email subject line shall state "State 404 Program [& ERP] [select: Individual Permit or General Permit] Application, Application/permit number, county." The body of the email/notification shall include:

Commented [RS11]: Is this just SHPO and THPO/Tribe or also local government?

Commented [RS12]: The Seminole Tribe suggests adding "Permit type" to assist the THPO and SHPO identify the type of review more quickly.

- a. Application number;
- b. Permit number (if applicable);
- c. Corresponding Environmental Resource Permit (ERP) number;
- d. Applicant name;
- e. City, County;
- f. Location (GPS coordinates, TRS, street address, or parcel ID);
- g. Brief description of the activity;
- h. A location map showing the project boundaries;
- i. Link to the Permit Application for additional information; and
- j. End date for the Department's initial 30-day review (comment due date).

2. ~~The consulting party will~~SHPO shall review the application for potential effects to historic properties. The THPO/Indian tribe may choose to review the application for potential effects to cultural resources or historic properties of religious and cultural significance.
 - a. If the application does not provide sufficient information required to make an effects determination, the consulting party ~~will~~shall, prior to the expiration of the Department's 30-day review period, ask the Department to request additional information from the applicant.
 - i. The request from the consulting party shall clearly identify the additional information required.
 - ii. The Department ~~shall~~will include the consulting party's questions in a Request for Additional Information. Once the Department receives a response, it will provide the requested information to the consulting party and inform the consulting party of the deadline by which the Department must provide public notice of the application.
 - iii. The consulting party shall review the new information and provide an effects determination pursuant to Section III.A. and provide recommendations for resolution of any adverse effects pursuant to Section III.B. within the time period prescribed by the Department in its notification.
 - b. If the application provides sufficient information required to make an effects determination, the consulting party shall strive to provide an effects determination pursuant to Section III.A. and provide recommendations for resolution of any adverse effects pursuant to Section III.B. within the 30-day review period.
3. State 404 Individual Permits ~~shall~~will also go out on public notice in accordance with Rule 62-331.060, F.A.C. and Section II.B., below. The consulting parties may have additional comments pertaining to the State 404 Program individual permit ~~during the public notice comment window at this time.~~
4. Within 15 days of receipt of notice of intent to use a State 404 general permit, ~~the consulting party~~SHPO shall provide to the Department the presence or absence of historic properties from ~~results of its review of the Florida State Master File.~~ SHPO shall also notify the Department if the general permit application needs to be processed as an individual permit.
- 4.5. ~~If the THPO/Indian tribe chooses to review a notice of intent to use a State 404 general permit, within 15 days of receipt the THPO/Indian tribe will provide to the Department information on the presence or absence of cultural resources or historic properties of religious and cultural significance. THPO/Indian tribe will also notify the Department if the general permit application needs to be processed as an individual permit, or corresponding tribe Master File.~~

B. Consultation during the public notice process.

1. Types of Action

- a. The Department will provide a public notice of all administratively complete State 404 Program individual permit applications pursuant to the provisions of Rule 62-331.060, F.A.C. SHPO, THPO/~~Indian Tribes~~ shall receive an email notification of the public notice in accordance with paragraph 62-331.060(2)(a), F.A.C.
 - b. The Department will publish notice on its website and provide for public comment on any proposed settlement of a State enforcement action.
2. The consulting parties may, within the timeframes established in subsection 62-331.060(3), F.A.C., provide written comments and suggest permit conditions for the Department's consideration.
3. Pursuant to paragraph 62-331.052(1)(c), F.A.C., the Department may request additional information, from the applicant, to address any concerns it receives during the comment period.
4. ~~The consulting parties will~~ SHPO shall develop and evaluate alternatives or modifications to the application that could avoid, minimize, or mitigate adverse effects on historic properties identified through public comment and notify the Department of the recommendations.
- 4.5. ~~The THPO/Indian tribe may choose to develop and evaluate alternatives or modifications to the application that could avoid, minimize, or mitigate adverse effects on historic properties identified through public comment and notify the Department of the recommendations.~~
- 5.6. To resolve any adverse effects, the Department ~~shall~~ will require, as a specific condition of the authorization, recommendations to avoid, minimize, or mitigate adverse effects on historic properties.

C. Department decision on a State 404 Permit Application

1. In making the decision on an ~~individual or general~~ State 404 Permit Application, the Department shall consider all criteria set forth in the State 404 Program, including the effects of the permitted activity on historic properties, ~~and any comments of the Consulting Parties,~~ and any views of other interested parties.
2. The Department ~~shall~~ will not provide authorization for an application that has an unresolved adverse effect on historic properties. The Department ~~will~~ shall resolve any adverse effect on historic properties in accordance with Section III.B.

3. All State 404 individual permits shall include a condition requiring permittees to cease work immediately and contact SHPO in the event upon the of an unanticipated discovery of historic resources, effects to historic resources, or the identification of unmarked human remains. See 62-330.350(1)(n), F.A.C.

a. SHPO shall notify the THPO/Indian tribe on the same day that SHPO is notified by the permittee. All State 404 individual permits are subject to consultation and additional Cultural Resource Assessment Surveys in the event of unanticipated discovery of historic resources, effects to historic resources, or the identification of unmarked human remains during construction.

4. The Department may modify, suspend, or revoke a State 404 general permit in accordance with Rule 62-331.080. See 62-331.201(f) – (v), F.A.C.

a. In the event of an unanticipated discovery, effects to historic resources, or the identification of unmarked human remains, the Department shall notify the SHPO and THPO/Indian tribe on the same day the Department is notified by the permittee. Activity authorized under the permit shall not resume without written authorization from the Department, SHPO and THPO/Indian tribe.

b. All State 404 general permits are subject to consultation and additional Cultural Resource Assessment Surveys in the event of unanticipated discovery of historic resources, effects to historic resources, or the identification of unmarked human remains during construction.

a.---

D. Provisions for State 404 Program General Permits (no notice)

1. Applicants for no-notice general permits are instructed in paragraph 62-331.200(3)(j), F.A.C. to pre-coordinate with SHPO to determine if there are any properties determined to be eligible or potentially eligible for listing on the National Register of Historic Places.

2. When an applicant submits a sufficient request for pre-review, SHPO shall respond to the request within 15 days of receipt and shall include any responses received from the THPO/Indian tribe. The applicant shall then follow the procedures in subparagraph 62-331.200(3)(j)1. or 2., F.A.C., as appropriate.

3. If both SHPO and THPO/Indian tribe does not respond within 15 days of receipt of the request, and the project does not otherwise require notice to the Department to proceed under the 404 general permit, the permittee may proceed with the work, provided all other required authorizations have been obtained.

4. The Department may modify, suspend, or revoke a State 404 general permit in accordance with Rule 62-331.080. See 62-331.201(f) – (v), F.A.C.

a. ~~All State 404 general permits are subject to consultation and additional Cultural Resource Assessment Surveys in the event of unanticipated discovery of historic resources, effects to historic resources, or the identification of unmarked human remains during construction.~~

b. ~~In the event of an unanticipated discovery, effects to historic resources, or the identification of unmarked human remains, the Department shall notify the SHPO and THPO/Indian tribe on the same day the Department is notified by the permittee. Activity authorized under the permit shall not resume without written authorization from the Department, SHPO and THPO/Indian tribe.~~

~~3. All State 404 General Permits are subject to consultation and additional cultural resource assessments in the event of unanticipated discoveries during construction in accordance with paragraphs 62-331.20(4)-(v), F.A.C.~~

III. EFFECTS DETERMINATIONS AND RESOLUTION OF ADVERSE EFFECTS

A. Effects Determinations

1. **No effect to historic properties.** If the consulting party finds that either there are no historic properties present, or there are historic properties present but the permit application will have no effect upon them, the consulting party will notify the Department the application will have no effect on historic properties.

2. **No adverse effect to historic properties.**

a. If the consulting party finds historic properties are present and may be affected by the application, the consulting party will assess adverse effects, if any. An adverse effect is found when an application may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the application that may occur later in time, be farther removed in distance or be cumulative.

b. Examples of adverse effects on historic properties include, but are not limited to:

i. Physical destruction of or damage to all or part of the property, including inundation;

- ii. Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines;

Commented [MH13]: Replace with state regulation.

- iii. Removal of the property from its historic location;

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- iv. Change of the character of the property's use or of physical features within the property's setting, or impacts to the landscape that contribute to its historic significance;

- v. Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features; and

- vi. Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe.

- c. The consulting party will notify the Department the application will have no adverse effect on historic properties when it is determined the application may have an effect on historic properties but will not adversely affect the historic property.

3. Conditional no adverse effect to historic properties.

- i. The consulting parties will develop and evaluate alternatives or modifications to the application that could avoid, minimize, or mitigate adverse effects on historic properties, and notify the Department of their recommendations.
- ii. To resolve the application's adverse effects, the Department will require, as a specific condition of the authorization, the consulting party's recommendations to avoid, minimize, or mitigate adverse effects on historic properties.

4. Adverse effect to historic properties.

If the consulting party cannot recommend alternatives or modifications to the application or permit conditions that could avoid, minimize, or mitigate adverse effects on historic properties, the consulting party shall notify the Department the application has an adverse effect on historic properties.

- 5. **For General Permits:** A consulting party may request the Department evaluate a general permit application as an individual permit due to concerns about potential adverse effects on historic properties.

B. Resolution of Adverse Effects

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[SHPO is working on this Section – proposed language is welcome]

IV. **TERMS & DEFINITIONS** *(take out any that don't get used in the document or add others as appropriate)*

~~A.~~ “Area of Potential Effects” means the geographic area or areas within which a state undertaking may directly or indirectly effect historic properties or historic resources, if any such properties exist. The area of potential effects is influenced by the scale and nature of a state undertaking and may be different for different kinds of effects caused by a state undertaking

~~A.~~

~~B.A.~~ “Consultation” means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the historic properties review.

~~B.~~ “Certified Local Government” means a local government that has been certified to meet Federal and State standards, as set forth in the “Florida Certified Local Government Guidelines” (Form HR3E03204-02), incorporated in Rule 1A-46.001(2)(e), F.A.C., and can participate in the nationwide program of financial and technical assistance to preserve properties.

~~C.~~ “Consultation” means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the historic properties review.

~~D.~~ “Cultural resource” means physical evidence or place of past human activity: site, object, landscape, structure, or site, structure, landscape, object or natural feature of significance to a group of people traditionally associated with it.

~~G.E.~~ “Effect” means alteration to the characteristics of a historic property or historic resource qualifying it for inclusion in or eligibility for the National Register of Historic Places.

~~D.E.~~ “Eligible for Inclusion in the National Register” includes both properties formally determined as such in accordance with the regulations of the Secretary of the U.S. Department of the Interior and all other properties that meet the National Register criteria published at 36 C.F.R. § 60.4.

~~E.G.~~ “Historic property” or “historic resource” means any prehistoric or historic district, site, building, object, or other real or personal property of historical, architectural, or archaeological value, and folklife resources. These properties or resources may include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships,

Commented [RS15]: THPO would like to reaffirm the role of the Seminole Tribe in consulting with SHPO and DEP regarding the creation of a treatment plan for resolving an adverse effect, as well as reaffirm that THPO, SHPO and DEP must be in agreement over how to resolve the adverse effect or the application goes to EPA for review.

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engineering works, treasure trove, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government, and culture of the state.

H. "Historical Resources Assessment Survey" or "Cultural Resources Assessment Survey" means a survey of the project site which meets the requirements set forth in Chapter 1A-46, F.A.C., Archaeological and Historical Report Standards and Guidelines.

Commented [RS16]: Made consistent with 404 Handbook Definition 16

F. "Indian Tribe" means an Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. Shortened from 800.16(in) ---maybe find a state definition if one exists.

G-I. "National Register of Historic Places" means the list of historic properties significant in American history, architecture, archaeology, engineering, and culture, maintained by the Secretary of the Interior, as established by the National Historic Preservation Act of 1966, as amended.

H-J. "State undertaking" means a project, activity or program in which a state agency of the executive branch has direct or indirect jurisdiction; those in which a state agency provides financial assistance to a project or entity; and those in which a state agency is involved through the issuance of state permits or licenses.

I-K. "Tribal Historic Preservation Officer" means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for the purposes of assessing the effects on a state undertaking and seeking ways to avoid, minimize or mitigate any adverse effects on historic properties. "Unmarked human remains" means any human skeletal remains or associated burial artifacts or any location, including any burial mound or earthen or shell monument, where human skeletal remains or associated burial artifacts are discovered or believed to exist on the basis of archaeological or historical evidence, excluding any burial marked or previously marked by a tomb, monument, gravestone, or other structure or thing placed or designed as a memorial of the dead.

Commented [SG17]: Modified from 800.16. Feedback requested.

V. CONFIDENTIALITY

Confidentiality: The Agency/Department shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. Neither the Department nor SHPO are authorized to disclose information about the location, character, or ownership of a cultural resource or historic property of religious and cultural significance provided by the THPO/Indian tribe pursuant to this Agreement.

VI. DISPUTE RESOLUTION

- A. Disputes. An application will be processed following the procedures in paragraph 62-331.052(3)(b), F.A.C. when:
1. The consulting agencies cannot agree on the effect determination of a proposed activity, or
 2. the Agency does not accept the recommendations a consulting agency provides to eliminate, reduce, or mitigate the effects on historic properties.
- B. The Agency shall notify the consulting agency and EPA in writing of the Agency's failure to accept the recommendations, with the reason for doing so.

VII. TRAINING REQUIREMENTS

- A. DEP shall will provide occasional training for SHPO and other consulting parties regarding the State 404 Program and ERP Program.
- B. SHPO shall will provide occasional training for DEP and other consulting parties regarding the historic property review process.
- B.C. THPO/Indian tribe may provide occasional training for DEP and other consulting parties regarding cultural resources or historic properties of religious and cultural significance on ancestral, aboriginal, or ceded lands.

VIII. AMENDMENTS

- A. This agreement may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date the amendment is signed by all of the signatories.

IX. TERMINATION

- A. If any signatory to this agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VII, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the agreement upon written notification to the other signatories.

X. SIGNATURES

Florida Department of Environmental Protection

Commented [SG18]: These sections are still being developed. Proposed language is welcome.

Date: _____

By: _____

Florida Department of State, Division of Historical Resources

Date: _____

By: _____

DRAFT

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